

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

BRUCE CHAPMAN and HANDLE WITH CARE
BEHAVIOR MANAGEMENT SYSTEM, INC.,

Plaintiffs,

-v-

1:04-CV-867

NEW YORK STATE DIVISION FOR YOUTH, et al.

Defendants.

UNITED STATES ex rel. BRUCE CHAPMAN,

Plaintiff,

v.

1:04-CV-1505

OFFICE OF CHILDREN AND FAMILY SERVICES
OF THE STATE OF NEW YORK, et al.,

Defendants.

APPEARANCES:

OFFICE OF HILARY ADLER
Attorneys for Plaintiff
184 McKinstry Road
Gardiner, New York 12525

CORNELL UNIVERSITY OFFICE OF
UNIVERSITY COUNSEL
Attorneys for Defendants Cornell University, New
York State College of Human Ecology at Cornell
University, Michael A. Nunno, Gwen Ames,
Denise J. Clarke, and Virginia Sierra
300 CCC Building
Garden Avenue
Ithaca, New York 14853

OF COUNSEL:

HILARY ADLER, ESQ.

NELSON E. ROTH, ESQ.
VALERIE L. DORN, ESQ.

HON. ANDREW M. CUOMO
Attorney General of the State of New York
Attorney for Defendants Office of Children and
Family Services of the State of New York, The
Department of Family Assistance of the State
of New York, and Peter D. Miraglia
The Capitol
Albany, New York 12224

DOUGLAS J. GOGLIA, ESQ.
NELSON SHEINGOLD, ESQ.
Assistant Attorneys General

PETRONE & PETRONE, P.C.
Attorneys for Defendants Hillside Children's
Center, Dennis Richardson, and Douglas
Bidleman
1624 Genesee Street
Utica, NY 13502

DAVID H. WALSH, IV, ESQ.

HON. RICHARD S. HARTUNIAN
United States Attorney for the
Northern District of New York
Attorney for Amicus Curiae The United States
of America
P.O. Box 7198
100 South Clinton Street
Syracuse, New York 13261-7198

WILLIAM H. PEASE, ESQ.

DAVID N. HURD
United States District Judge

DECISION and ORDER

On July 5, 2010, plaintiffs filed motions to recuse in the above-captioned related cases pursuant to 28 U.S.C. § 455(a). The State defendants and the Cornell defendants opposed. The motion was taken on submission without oral argument.

A United States judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The party seeking recusal has the burden of demonstrating "an 'objectively reasonable basis for questioning a judge's impartiality.'" Jemzura v. Pub. Serv. Comm'n, 961 F. Supp. 406, 410 (N.D.N.Y. 1997) (McAvoy, C.J.)

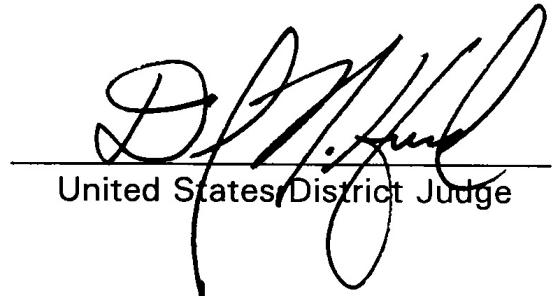
(quoting In re I.B.M. Corp., 45 F.3d 641, 644 (2d Cir. 1995)). Recusal is appropriate only where "a reasonable person, knowing all the facts, [would] conclude that the trial judge's impartiality could reasonably be questioned." Id. (quoting U.S. v. Lovaglia, 954 F.2d 811 (2d Cir. 1992)). Recusal cannot be based upon rulings of the court, but rather, upon extrajudicial matters. Id. at 411. Moreover, there is an obligation to refrain from recusal where grounds for doing so do not exist. Local 338, RWDSU v. Trade Fair Supermarkets, 455 F. Supp. 2d 143, 145 (E.D.N.Y. 2006).

Upon careful consideration of the assertions and arguments of the parties, plaintiffs have failed to meet their burden of establishing that there is a basis for recusal.

Accordingly, it is

ORDERED that plaintiffs' motion for recusal is DENIED.

IT IS SO ORDERED.



United States District Judge

A handwritten signature in black ink, appearing to read "D. P. Muller". Below the signature is a horizontal line, followed by the title "United States District Judge" in a standard font.

Dated: August 24, 2010
Utica, New York.